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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,040	03/01/2002	Joseph C. Cauthen	08442.0002-04	8078

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EXAMINER
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CHATTOPADHYAY, URMI

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/085,040	Applicant(s) CAUTHEN, JOSEPH C.	
	Examiner Urmi Chattopadhyay	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 102-182 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 102-182 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed 3/31/05 has been entered. All previous pending claims have been canceled, and new claims 102-182 have been added.

### ***Election/Restrictions***

2. Newly submitted claims 134-136 and 176-178 are directed to an invention that is independent or distinct from the invention previously claimed for the following reasons: in the amendments filed 3/24/04 and 10/12/04, applicant claimed a device comprising a flexible bladder. This claimed embodiment is shown in Figures 10A-10B. Claims 134-136 and 176-178 are claiming a device comprising a core element. This claimed embodiment is shown in Figures 5-6. Claims directed to a core element had not been previously presented. Because the flexible bladder and core element are disclosed as alternatives to each other and not useable together, a device with a flexible bladder is a patentably distinct species from a device with a core element. Since applicant has received an action on the merits for the previously presented invention of a device with flexible bladder, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 134-136 and 176-178 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

3. Newly submitted claims 143 and 144 are directed to an invention that is independent or distinct from the invention previously claimed for the following reasons: in the amendments filed

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3/1/02 and 3/24/04, applicant claimed a device comprising a slot. Claim 143 is claiming a device comprising a hole, and claim 144 is claiming a device comprising a mesh or screen. Claims directed to a hole, mesh or screen, with respect to a receptacle configured to receive a fixation element, had not been previously presented. Because the slot, hole and mesh or screen are disclosed as alternatives to each other and not being used together, a device with a slot is a patentably distinct species from a device with a hole, mesh or screen. Since applicant has received an action on the merits for the previously presented invention of a device with slot, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 143 and 144 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

4. This application contains claims directed to the following patentably distinct subspecies for each species of the claimed invention not previously claimed or examined:

1) Extension Thickness

- a. substantially uniform
- b. thicker adjacent to the main body portion than at a portion lateral to the main body portion

2) Undeflected Orientation of Extensions

- a. extensions lie in same reference plane
- b. extensions lie in reference planes oriented 60 degrees to each other

Applicant is required under 35 U.S.C. 121 to elect a single disclosed subspecies under each species [ex. Species 1a AND 2b] for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 102 and 141 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and **a listing of all claims readable thereon**, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

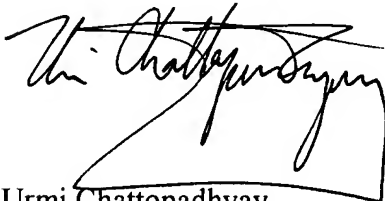
Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Urmi Chattopadhyay whose telephone number is (571) 272-4748. The examiner can normally be reached on Tuesday-Thursday 10:00am - 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Urmi Chattopadhyay

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David J. Isabella  
Primary Examiner